

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

**HELENA DIVISION**

BENJAMIN C. SMITH,

Plaintiff,

vs.

CARRI NEIMAN, in her official  
capacity, HOUSING URBAN AND  
DEVELOPMENT, a federal agency,  
and HELENA HOUSING, a federally  
funded residential entity,  
Defendants.

No. CV-21-21-H-SEH

**ORDER**

On March 17, 2021, Plaintiff Benjamin C. Smith (“Plaintiff”) moved to proceed in forma pauperis<sup>1</sup> without prepaying fees or costs. The application will be GRANTED subject to the terms and conditions of this Order.

The Complaint has been screened under 28 U.S.C. §§ 1915(e)(2), 1915A(a), and 42 U.S.C. § 1997e(c), and read liberally.<sup>2</sup> Reasonable inferences have been

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<sup>1</sup> See Doc. 1.

<sup>2</sup> See *Sause v. Bauer*, 138 S. Ct. 2561, 2563 (2018).

made.<sup>3</sup>

The Court will not treat Plaintiff more favorably than parties with counsel of record,<sup>4</sup> is not obliged to assume or fill the role of Plaintiff's counsel, and may not provide personal assistance to Plaintiff.<sup>5</sup>

The Complaint asserts federal question subject matter jurisdiction under 28 U.S.C. § 1331. Allegations that one of the Defendants is a federal agency or that one of the Defendants is federally funded are insufficient to appropriately assert such jurisdiction. Federal question jurisdiction exists only if the complaint properly pleads a case arising under the Constitution, laws, or treaties of the United States.<sup>6</sup>

An amended complaint may be filed. It is expected to state: (1) the basis for federal question jurisdiction; (2) the facts asserted to have been engaged in by each Defendant that will enable the Court to draw reasonable inference that each Defendant is liable for the conduct that each Defendant is asserted to have

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<sup>3</sup> See *McCabe v. Arave*, 827 F.2d 634, 640 n. 6 (9th Cir. 1987) (citing *Traguth v. Zuck*, 710 F.2d 90, 95 (2d Cir. 1983).

<sup>4</sup> See *Jacobsen v. Filler*, 790 F.2d 1362, 1364 (9th Cir. 1986).

<sup>5</sup> See *Pliler v. Ford*, 542 U.S. 225, 231 (2004) (quoting *Martinez v. Ct. of Appeal of Cal., Fourth App. Dist.*, 528 U.S. 152, 162 (2000)).

<sup>6</sup> See *Provincial Gov't of Marinduque v. Placer Dome, Inc.*, 582 F.3d 1083, 1090-91 (9th Cir. 2009).

engaged in; (3) that such conduct damaged Plaintiff's legally protected interests or property rights; and (4) that such conduct gives rise to the claim or claims Plaintiff asserts against each Defendant.


ORDERED:

1. Plaintiff's Application to Proceed in District Court without Prepaying Fees or Costs is GRANTED.<sup>7</sup>

2. Plaintiff shall have to and including **June 18, 2021**, in which to file an amended complaint that meets and satisfies pleadings requirements necessary and appropriate to state a case within the jurisdiction of this Court.

3. If an appropriate amended complaint is not timely filed, this case will be dismissed.

DATED this 26<sup>th</sup> day of May, 2021.

  
SAM E. HADDON  
United States District Judge

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<sup>7</sup> See Doc. 1.